

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Prime Time Christian Broadcasting, Inc.
v.
Comcast Cablevision of New Mexico, Inc.
Request for Mandatory Carriage of
Television Station KPTF-TV,
Farwell, Texas
CSR-5831-M

MEMORANDUM OPINION AND ORDER

Adopted: May 13, 2002

Released: May 16, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Prime Time Christian Broadcasting, Inc. ("PTCB"), permittee/licensee of television broadcast station KPTF-TV, Farwell, Texas ("KPTF" or the "Station") filed the above-captioned must carry complaint against Comcast Cablevision of New Mexico, Inc. ("Comcast") for failing to carry KPTF on its cable system serving Tucumcari, New Mexico (the "cable community"). Comcast filed an opposition to which PTCB replied. For the reasons discussed below, we grant the complaint.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media

1 On March 21, 2002, Comcast filed with the Commission a petition for market modification requesting that the community of Tucumcari City and unincorporated areas of Quay County, New Mexico be deleted from the market of KPTF [CSR-5868-A]. The petition was placed on Public Notice on April 5, 2002. The Commission typically consolidates requests for mandatory carriage with market modification requests that involve the same television station and communities. In the instant case, however, the pleading cycle for Comcast's market modification petition exceeds the time within which the Commission must dispose of the must-carry complaint. Accordingly, Comcast's market modification petition will be addressed separately.

2 8 FCC Rcd 2965, 2976-2977 (1993).

Research.³ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

III. DISCUSSION

3. In support of its complaint, KPTF states that it is licensed to Farwell, Texas, which is in the Amarillo, Texas DMA. It states further that Comcast operates a cable television system in Tucumcari, New Mexico, which is also in the Amarillo, Texas DMA. KPTF contends that because it is located within the same DMA as the Comcast Tucumcari cable system, it is entitled to mandatory carriage on that system. KPTF asserts that it formally requested that Comcast commence carriage of the Station's signal on its cable system.⁴ KPTF claims that Comcast did not respond to its request for mandatory carriage in violation of Section 76.61(a)(2) of the Commission's rules, which requires cable operators to respond in writing to requests for carriage within 30 days of receipt of such requests.⁵ KPTF has committed to do whatever is needed to provide Comcast with a good quality signal.⁶ KPTF requests that the Commission order Comcast to commence carriage of its signal on Comcast's Tucumcari cable system.

4. In opposition, Comcast states that it measured KPTF's signal strength at its system headend and determined that the Station's signal strength is inadequate.⁷ In reply, KPTF contends that it has established a *prima facie* case for carriage and it will provide any specialized equipment necessary to receive its signal.⁸ KPTF reiterates its request that the Commission order Comcast to commence carriage of the KPTF signal within sixty days after the release of an Order.⁹

5. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") provides that a cable operator is not required to carry a local commercial television broadcast station that does not deliver a good quality signal to the principal headend of a cable system.¹⁰ Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, we believe that the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. With respect to the standard to be used to determine what constitutes a good quality signal at a cable system's headend, the 1992 Cable Act adopted a standard for VHF and UHF commercial stations.¹¹ For VHF commercial television station signals, the

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission's rules, 47 C.F.R. § 76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

⁴ Complaint at 2 and Exhibit A.

⁵ Complaint at 2-3. *See* 47 C.F.R. § 76.61(a)(2).

⁶ Complaint at 2-3.

⁷ Opposition at 2 and Supplement to Opposition at 1-2.

⁸ Reply at 1.

⁹ *Id.* at 3.

¹⁰ 47 U.S.C. § 534(h)(1)(B)(iii).

¹¹ *Id.*

standard is -49 dBm; for UHF commercial television station signals, the standard is -45 dBm.¹²

6. In this instance, Comcast's signal quality tests determined that KPTF had no signal strength at its Tucumcari headend.¹³ KPTF has not disputed the results of these tests. However, KPTF has committed to acquire and install, at its own expense, any and all necessary improvements and equipment needed to provide Comcast with a good quality signal. KPTF, by committing to provide any necessary equipment has satisfied its obligation to bear the costs associated with delivering a good quality signal.¹⁴ Thus, we find that KPTF is entitled to mandatory carriage on the cable system at issue.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the must carry complaint filed by Prime Time Christian Broadcasting, Inc., permittee/licensee of television broadcast station KPTF, Farwell, Texas against Comcast Cablevision of New Mexico, Inc. **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that Comcast **SHALL COMMENCE CARRIAGE** of the KPTF signal on its Tucumcari, New Mexico cable system within sixty (60) days from the date that KPTF provides a good quality signal to Comcast' Tucumcari headend.¹⁵

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

¹² *Id.* See 47 C.F.R. § 76.55(e)(3).

¹³ Supplement to Opposition at 1.

¹⁴ See *Must Carry Order*, 8 FCC Rcd at 2991. See, e.g. *WMPF, Inc.* 11 FCC Rcd 17264 (1996); *KSLS, Inc.*, 11 FCC Rcd 12718 (1996). See also 47 U.S.C. § 534(h)(1)(B)(iii).

¹⁵ During the pendency of a petition for modification of a station's ADI market, cable operators are subject to the Commission's status quo provisions. See *Must Carry Order, supra.* 8 FCC Rcd at 2977.

¹⁶ 47 C.F. R. § 0.283.